

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:12-cv-00318-MR-DLH**

**DAVID WATKINS and
MAUREEN WATKINS,**

Plaintiffs,

VS.

**SOPREMA, INC. and
ELASTIKOTE, LLC,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendant Soprema, Inc.'s Motion to Dismiss Counts Five and Six of Plaintiffs' Complaint [Doc. 8] and the Magistrate Judge's Memorandum and Recommendation [Doc. 8] regarding the disposition of that motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the motion to dismiss and to submit a recommendation for its disposition.

On March 27, 2013, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed conclusions of law in support of a recommendation regarding the Defendant's Motion. [Doc. 41]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant's Motion to Dismiss should be denied with respect to Count Five of the Complaint and granted with respect to Count Six.

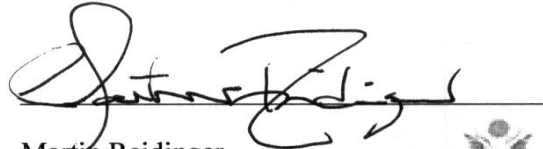
ORDER

IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation [Doc. 41] is **ACCEPTED** and Defendant Soprema, Inc.'s Motion to Dismiss [Doc. 8] is **GRANTED IN PART** with respect to the claim of fraud contained in Count Six of the Complaint.

IT IS FURTHER ORDERED that Defendant Soprema, Inc.'s Motion to Dismiss [Doc. 8] is **DENIED IN PART** with respect to the claim of negligence contained in Count Five of the Complaint.

IT IS SO ORDERED.

Signed: April 18, 2013


Martin Reidinger
United States District Judge

